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COURT OF APPEAL, FOURTH APPELLATE DISTRICT

DIVISION ONE

STATE OF CALIFORNIA

In re C.K., a Person Coming Under the Juvenile Court Law.
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THE PEOPLE,

Plaintiff and Respondent,

v.

C.K.,

Defendant and Appellant.

D076760

(Super. Ct. No. J241088)

APPEAL from a judgment of the Superior Court of San Diego County,
Browder A. Willis III, Judge. Affirmed.

Sheila O'Connor, under appointment by the Court of Appeal, for
Defendant and Appellant.

Xavier Becerra, Attorney General, Lance E. Winters, Chief Assistant
Attorney General, Julie L. Garland, Assistant Attorney General, Charles C.
Ragland and Amanda Lloyd, Deputy Attorneys General, for Plaintiff and
Respondent.

Seventeen-year-old C.K. (CK) admitted committing an assault by means likely to produce great bodily injury, with a personal use of a deadly weapon. CK had been subject to true findings in several prior wardship proceedings, and had engaged in escalating violent conduct and sexual acting out. He also abused drugs, had gang ties, and had mental health issues.

Following a contested disposition hearing, the court adopted the probation department's recommendation that CK be committed to the Division of Juvenile Justice (DJJ) and imposed the commitment with a maximum four-year custody period.

CK challenges the court's disposition finding. He contends the court abused its discretion in selecting DJJ because other less restrictive placements would have adequately addressed his issues. This contention is without merit. The court carefully considered other placements and found DJJ was the only facility that would effectively serve CK's needs and interests. The court did not abuse its discretion in reaching this conclusion.

FACTUAL SUMMARY

Background

In August 2017, CK got into a fight at high school, resulting in property damage. His mother (Mother) reported she had been "struggling for years to divert [CK] away from a delinquent lifestyle with no success." After a true finding, CK was placed on probation.

While on probation, in March 2018, CK attempted to steal Mother's money, attacked her, took her BB gun, and ran from the home. Later that evening, officers arrested CK as he was attempting to evade them. After a true finding of resisting a peace officer, CK was placed in the Breaking Cycles program. While in juvenile hall, he got into several fights and threatened staff with violence.

After his release, CK violated probation, including by continuing to use marijuana and being suspended from school. A psychologist (Denise Boychuk) evaluated CK and concluded he was at “high risk for future delinquency.” The psychologist said CK was of above-average intelligence, but suffered from various psychological conditions, including oppositional defiant disorder and attention deficit hyperactivity disorder, and that he abused marijuana and alcohol. The psychologist also noted that CK had been sexually aggressive with girls at school, inappropriate with his stepsisters, and had ordered \$90 of pornography without Mother’s permission. The psychologist recommended CK participate in anger management programs, substance abuse treatment, and intensive therapy.

Several months later, in August 2018, CK punched another juvenile while at a juvenile detention facility. The attack appeared to be unprovoked. After CK admitted to a misdemeanor assault, the court referred CK to the JFAST program, but the program did not accept him because it could not offer sufficient structure and guidance, particularly with his mental health issues. A September 2018 probation report noted that CK continues to be “defiant”; had engaged in numerous fights or near-fights; and exposed his genitals to female staff.

In October 2018, the court released CK to Mother’s house with electronic monitoring. During the next few months, CK was detained after violating probation by using alcohol, marijuana, and methamphetamine, and disobeying curfew.

In January 2019, the court again released CK into Mother’s custody. The next month, CK was returned to the juvenile facility after he cut off his GPS device; left his court-ordered placement; and smoked marijuana. Shortly after, a correctional officer found CK had pills hidden in his groin

area, and also found a marijuana blunt and matches in his room. Following a contested hearing, the court found the People did not prove beyond a reasonable doubt that CK had brought a controlled substance into the juvenile detention facility, and dismissed the petition.

Current Offense

In May 2019, while at juvenile hall, an officer told CK and another youth to go back to their rooms. They refused, yelling and threatening the responding officers. After the other youth threw chairs at the officers, CK threw six chairs at the officers and flipped over a large table while yelling, “Fuck staff!” When CK threw one more chair at a responding officer, two other officers gained partial control and took him to the ground. CK continued to violently resist the officers.

Based on this incident, the People filed a petition charging CK with seven felony assault counts with an added deadly weapon allegation, and one count of resisting an officer through force. CK admitted to one assault count and admitted the use of a deadly weapon, and the court dismissed the remaining seven counts with a *Harvey* waiver.

Additional Psychological Evaluations

In June 2019, a second psychological evaluation was conducted by Dr. Warren O’Meara. Dr. O’Meara found:

“[CK] is on the cusp of developing antisocial personality disorder. [H]e has developed a pervasive pattern of [disregarding and violating] the rights of others since he was 15 years old. He has failed to conform to social norms with respect to lawful behaviors. He has been deceitful, repeatedly lying, and manipulating others. He has been impulsive. He has been irritable and aggressive, has engaged in physical assaults and fights, and may have reckless disregard for safety of self or others. . . . He appears to lack remorse. These personality characteristics make insight-oriented psychotherapy contraindicated. He

needs to be in a[n] . . . environment that has clear consequences for both positive and negative behaviors.”

Dr. O’Meara recommended cognitive behavioral treatment, and monitoring of psychiatric medication, substance abuse, and gang involvement.

Shortly after, the court permitted Mother to take CK to Texas for a third psychological evaluation, a neuropsychological evaluation. The resulting report was consistent with the prior evaluations, although the Texas evaluators questioned whether CK had attention deficit disorder and suggested a neurological basis for his actions. The evaluators noted CK has above-average intelligence, but has “difficulties with impulse control, anger expression, poor decision-making, . . . lack of empathy, substance abuse, self-esteem, anxiety, and depression.” The evaluators also said CK had “methamphetamine and marijuana” addictions. The evaluators recommended CK participate in intensive neurofeedback sessions and counseling, and change his diet and sleep patterns.

Social Study Report

In the July 2019 social study report, probation officer Meaghan Hardy recommended CK be placed at DJJ. Officer Hardy discussed that this is CK’s fourth petition with a true finding. She detailed CK’s repeated misconduct while at juvenile hall, stating he had been involved in 62 incidents of “violent/inappropriate/security risk/or sexual misconduct,” and at least 12 of those incidents involved CK exposing himself to female officers. The officer said she had reviewed the psychological assessments, and after considering these assessments and CK’s age, criminal sophistication, current offense, and rehabilitative needs, she concluded DJJ would be “the most beneficial program” because it offers an extensive mental health treatment program and a program to address CK’s current sexual misconduct issues to reduce the risk of a future sexual offense.

The probation officer also observed that CK was evaluated using a “JSORRAT-II” assessment and received a score reflecting a “moderate range of risk for committing one or more future sexual offenses.” The officer said she considered a commitment to the Youthful Offender Unit (YOU) program, but the program did not have the mental health treatment or sex offense-based programming needed by CK.

CK opposed the DJJ placement recommendation, and the court twice granted CK’s counsel a continuance to provide her more time to explore alternative placement options.

Disposition Hearing

By the time of the rescheduled hearing on September 25, CK had turned 18 years old. At the outset of the hearing, the court (which had presided over hearings on CK’s cases for about one year) said it had read the probation department’s report and had carefully reviewed the entire file. The court said it “reviewed every social study following every petition and probation violation. I have each and every one of them tabbed. I have 16 tabs in the file.”

Prosecution Case

At the hearing, the prosecutor urged the court to adopt the probation department’s recommendation, and called two supporting witnesses: Officer Hardy and Officer Lorraine Custino, a DJJ agent.

Officer Hardy testified she based her recommendation on CK’s entire history, including the substantial number of incidents while CK was at the juvenile detention facility. She said the current records showed he had been written up for 80 incidents. She said at least 15 of those incidents involved sexual behavior and 23 incidents involved violent conduct, including gang-related behavior.

Officer Hardy testified she considered several alternatives to DJJ, including YOU and Casa Raphael, but found none of these options would be suitable.

With respect to YOU, Officer Hardy said she was familiar with this program because she had worked for YOU for five years. She testified this program would not offer sufficient treatment for CK's mental health issues and sexual-acting-out behaviors. She also said that gang fights were frequent and it is difficult for YOU officers to keep rival gang members separated in the placement. On cross-examination, she acknowledged that YOU offers individual counseling and that gang fights also occur at DJJ.

Officer Hardy also said she considered a residential treatment facility as a possible placement and applied to an interagency placement committee, but the committee found CK to be ineligible. She also considered the Genesis Treatment Center, but its director said CK would not be an appropriate fit based on his history of sexually inappropriate behaviors. Officer Hardy said the programming is only 90 days and is voluntary, meaning CK "could walk away at any time" as it is "not secured." For similar reasons, Officer Hardy said Casa Raphael would not be appropriate because it is not a secure facility, does not provide sufficient supervision, and does not offer any treatment or programming for sexual misconduct.

After screening CK's case with the DJJ and considering all possible options, Officer Hardy found DJJ was the appropriate placement for CK. She said: "They have both a mental health component as well as a program that offers sexually-based behavior[] programs. [H]e doesn't have to have ever been charged with a sex offense, but if [he is] exhibit[ing] sexual behaviors, that can be addressed there"

DJJ Officer Custino, who testified telephonically, described DJJ's extensive 45-day intake process, which includes medical, educational, and mental health screenings. The officer also detailed the available DJJ programming, which includes (1) aggression-interruption training, a 10-week cognitive behavior intervention; (2) gang intervention; (3) programming for sexual-acting-out behaviors; (4) substance abuse programming; (5) educational opportunities, including community college courses; (6) career technical education; (7) extensive mental health services; and (8) assistance with transitioning back into the community.

Defense Case

In opposing the DJJ placement, defense counsel argued DJJ is not a rehabilitation center or treatment facility, and urged the court to instead place CK in San Diego's YOU program or Casa Raphael.

Counsel submitted a memorandum of an interview with Officer Brian Day, a watch commander at the juvenile detention facility where CK was currently placed. Officer Day said he has seen CK's behavior improve; believes minors should have the opportunity to complete local rehabilitative programs close to their family; and opined that CK would benefit from the YOU program because it would provide CK with job training and continuous counseling.

At the hearing, defense counsel said she intended to rely on the written memorandum of Officer Day's observations instead of calling him as a witness. The court permitted her to do so after clarifying that Officer Day had never worked for YOU but had 20 years' experience at the juvenile detention facility.

Defense counsel then called Alvin Amar from the public defender's substance abuse assessment team, who recommended CK be placed at Casa

Raphael. Amar said that most individuals at Casa Raphael are referred from the adult criminal system, and the average age is about 25 years old. But Amar said he believed Casa Raphael was a “good fit” for CK because of its reputation for working with a younger population, especially “gang involved” individuals, and would provide comprehensive treatment for co-occurring issues. He said that although he has not directly communicated with Casa Raphael about CK, “based on our experience, [CK] absolutely meets criteria for the program.”

Defense Counsel’s Arguments

Defense counsel argued first. She initially said the DJJ placement was “too punitive,” and noted that when CK threw the chairs, none of the chairs hit the staff. The court responded that it “saw the video” and “[t]he chairs did make contact with staff.”

Defense counsel next argued at length that the juvenile authorities had “really dropped the ball” by failing to provide CK with any needed services during the past two years, nor has he ever been provided with a “less restrictive option[]” than DJJ. She said the initial psychiatric report made clear that CK needed intensive counseling and “we had mom repeatedly begging for” these services, but none were provided. Defense counsel also discussed the Texas neuropsychological evaluation, which counsel said showed CK is suffering from a brain development delay precluding his full understanding of empathy, learning through modeling, and impulse control. She said the Texas evaluators recommended CK receive treatment because his issues are mainly ones of “developmental delay.” Defense counsel also relied on Officer Day’s statements that CK would benefit from YOU, including its counseling services. Defense counsel concluded by asking the court to place CK in YOU or Casa Raphael, “or a combination of the two.”

Prosecutor's Arguments

The prosecutor responded by emphasizing CK's recent gang-motivated conduct, numerous violent acts, and repeated instances of sexual acting out. The prosecutor said CK has many serious "issues that need to be addressed [and t]he only place that . . . offers specific treatment for all of his issues is DJJ." The prosecutor observed that "the Court has gone above and beyond what it's required to do" by granting numerous continuances to permit defense counsel to explore less restrictive alternatives. The prosecutor argued the court should not rely on Officer Day's opinion because he is not part of the YOU program; does not perform YOU screening; and concedes that YOU does not provide treatment for inappropriate sexual conduct. Regarding Casa Raphael, the prosecutor argued that placing CK there "would be a big mistake" because CK "has demonstrated to the Court how violent he is" and would "jeopardize the safety of others" at the facility.

Court's Ruling

After extensively considering the evidence and arguments, the court found DJJ was the sole appropriate option for CK. In explaining this conclusion, the court recognized the existence of "system failures" resulting in CK not being provided with needed mental health services during the past several years. But the court also noted CK had continually reoffended and his conduct was becoming more serious. The court stated, "So that's why we're here, for system failures and personal failures."

Speaking to CK, the court then stated:

"[T]he Court is charged with the responsibility . . . of trying to figure out what's the best thing to do. So my options are DJJ, which . . . is not a prison. DJJ is an institution that used to be a prison. . . . There were 15,000 young people there beating each other up . . . constantly. The State of California was sued and directed by the federal court to get

its act together. [¶] There are [now] only 700 kids in the facility [at most]. [T]hat program has been completely revamped and restructured.

“They actually now have mental health services. They actually have staff psychiatrists and psychologists. They actually have certified teachers for high school and college level programs. [¶] . . . You are not here for a sex offense and I understand that [T]he only reason that [this] is even part of the discussion is because of the 15 documented incidents of sexually inappropriate behavior in the presence of female staff. . . .

“. . . Do[es DJJ] have the programs that could benefit you? And the simple . . . answer is yes. . . . [¶] . . . Yes, they do have the mental health programs and the substance abuse programs, and you could be referred to . . . [the sex offense] programming as necessary So that is [one option].

“The other option is [YOU]. That is our local unit, but they don’t have by any definition of programming mental health services. Yes, Second Chance has a counseling program that they manage in [YOU], [but] they don’t have the ability to even technically address inappropriate sexual misconduct in their facility That’s a reality. [¶] Beyond that, they have the exact same programming as DJJ. They have cognitive behavioral intervention. They have aggression disruption. They have gang intervention. They have credible messenger programming. They have high school. They have college. They have the exact program that DJJ has in that regard. So that is the [second option].

“The third is Casa Raphael. It is primarily an adult treatment program, dual diagnosis capabilities. . . . And they . . . have the ability to keep you longer than 12 weeks. [¶] . . . [¶] . . . That’s the third [option]. Those are the available options to this Court. . . . [¶] [T]he Court is required to find . . . that you . . . would benefit by the programs available in the [DJJ]. I have to measure that against [the alternatives].

“I have read the program summary from Casa Raphael. I certainly respect Mr. Amar’s assessment. [H]e is an expert [¶] [But] I am not convinced that that is an appropriate program I honestly believe that there would be a walk-away or a fight because it is . . . far more open. And I believe that while you’re improving, [it is] far more open than I believe you are ready for

“So that leaves [YOU] or DJJ. I have three pages of notes I have three different professionals [who] evaluated you They all have varying opinions about what is appropriate treatment. [¶] [Discussion of various evaluations, including CK’s paranoia, poor behavioral functioning, sexual aggression, and impulsivity.]

“I don’t think that [YOU] adequately addresses [the sexual acting out issues]. . . . I think that [DJJ] possesses the mental health component that is absolutely necessary, and[,] if necessary[,] the sexual or appropriate behavior counseling [to address] the sexual acting out that you have done in the [juvenile detention] facility.

“You do need counseling, you do need therapy, and I think [DJJ’s] psychological [treatment] component addresses that. . . . I do not think that the local programming, especially [YOU] addresses [that]. I do not think Casa Raphael as an adult treatment facility, dual diagnosis, has the ability to address the needs as well.

“Therefore, I am going to adopt the recommendations [of] the probation department”

In response to CK’s statement that he now realizes he does not want to spend the rest of his life institutionalized, the court said:

“[I] have to make a decision to what would give you the best access to the programming, and that is what we have in DJJ. They have worked very hard to make it not an institution. [T]hey have created a program that is unequal as far as the multitude of services, the Ph.D.’s [who] are there that can handle the mental health concerns and all the educational concerns and job training

“ . . . I know you disagree, and I understand that I had to make the ruling based on what I thought the programs could offer. So I hope that you continue to mature and educate yourself and you find the best of who you are . . . , and that you take full advantage of all the limited resources that are available to you and that you come out of this program much better than anyone could imagine or hope for; that you go to the program and you make yourself eligible for release in 18 months, or sooner . . . by being exceptional and using the maturity that you displayed over the last month, because [you are] capable [of this]. The potential is inside of you”

DISCUSSION

I. *Legal Principles*

Juvenile courts have broad discretion in selecting appropriate placements for delinquent minors. We review the court’s factual conclusions under the substantial evidence review standard. (*In re A.M.* (2019) 38 Cal.App.5th 440, 448-449.) If supported by the evidence, the court’s placement decision must be affirmed unless the court abused its discretion. (*Id.* at p. 448; *In re Edward C.* (2014) 223 Cal.App.4th 813, 829 (*Edward C.*); *In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329-1330.)

In making the placement decision, the juvenile court must consider the best interests of both the minor and the public. (See *In re Charles G.* (2004) 115 Cal.App.4th 608, 614; *In re Jimmy P.* (1996) 50 Cal.App.4th 1679, 1684 (*Jimmy P.*)). In so doing, the court should consider the minor’s age, the circumstances and gravity of the offense, the minor’s previous delinquent history, and the minor’s behavior on probation. (Welf. & Inst. Code, § 725.5; *In re Greg F.* (2012) 55 Cal.4th 393, 404; *Jimmy P.*, at pp. 1684-1685.)

We will uphold a DJJ commitment if there is “evidence in the record demonstrating both a probable benefit to the minor . . . and the inappropriateness or ineffectiveness of less restrictive alternatives.” (*In re*

Angela M. (2003) 111 Cal.App.4th 1392, 1396; see *Edward C.*, *supra*, 223 Cal.App.4th at p. 829.) It is not necessary that less restrictive placements be tried and demonstrated as ineffective to find the more restrictive placement is appropriate. (*In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1159 (*Nicole H.*); *John L. v. Superior Court* (2004) 33 Cal.4th 158, 184, fn. 10.)

II. *Analysis*

The juvenile court was very familiar with CK and his juvenile history. The court acknowledged it would have been preferable if CK had been previously provided with intensive therapy and counseling, but it also recognized the issue before it was not to remedy past system failures. The court properly understood its main task was to decide how best to address CK's and the public's current needs. (See *Jimmy P.*, *supra*, 50 Cal.App.4th at p. 1684.)

At the disposition hearing, CK was 18 years old, and had a documented history of repeated violent behavior, drug abuse, sexual acting out, gang-related conduct, and a complete unwillingness to comply with directions given by his parents, juvenile officers, or the court. Without serious intervention, CK was on his way to the adult criminal law system. Understanding this, the court extensively and thoughtfully considered the advantages and disadvantages of DJJ and the other alternatives. On our review of the entire record, the court did not abuse its discretion in finding the DJJ placement was the most suitable, and that the other alternatives would not effectively address CK's needs.

CK contends the court abused its discretion because it "did not provide [him] with a chance to try" the YOU program. However, a juvenile court is not required to attempt less restrictive placements if they would not be suitable. (*Nicole H.*, *supra*, 244 Cal.App.4th at p. 1159.) The court

specifically found YOU did not have effective programming to address CK's mental health issues or his escalating pattern of sexually acting out.

CK argues the evidence did not support this finding because (1) the court said YOU had virtually the exact same programming as DJJ with respect to mental health treatment; and (2) CK did not suffer from "sexual deviancy" issues and thus did not need sexual misconduct treatment. These arguments are unsupported.

As to the first point, the court did not find YOU had equivalent programming with respect to mental health treatment. The court recognized that YOU offers counseling services through the Second Chance program, but the court found these services were not *equivalent* to the comprehensive mental health treatment provided at DJJ. The court told CK, "You do need counseling [and] therapy, *and I think [DJJ's] psychological [treatment] component addresses that I do not think that the local programming, especially [YOU], addresses that.*" (Italics added.) Officer Hardy's report and testimony support this finding.

To support his argument that the court found YOU and DJJ would provide the same mental health services, CK relies on the court's statement that the two programs offer the "exact same programming." CK takes this statement out of context. Shortly before the court made the "same programming" comment, the court said YOU *does not "have . . . any definition of programming mental health services"* or sexual misconduct treatment, and then said, "[b]eyond that, [the two programs] have the exact same programming." (Italics added.) And, as set forth above, the court later specifically found the local programming at YOU would not provide CK with necessary mental health services.

As to CK's second point, we find unavailing his argument he does not need sexual misconduct treatment because he does not have a diagnosed sexual disorder. He relies on the following paragraph in Dr. O'Meara's report:

"In the undersigned's opinion, [CK's] acting out by sexually harassing female staff is a form of antisocial aggression. There is some evidence that he meets some criteria for exhibitionism however there is no evidence of fetishism, frotteurism, or pedophilia. While in juvenile hall he exposed himself to female staff either in a main control tank or in his room when they were doing rounds. He denied recurrent sexual urges or fantasies directed toward female staff, although within the last three months there were documented incidents of indecent expos[ure] which [CK] reported as 'an accident.'"

This paragraph does not suggest CK does not have sexual-acting-out issues that need to be addressed and treated. The evidence showed that CK repeatedly acted inappropriately and violently while in the juvenile detention facility, and at least 12 of those incidents involved highly inappropriate sexual behavior, such as exposing himself and masturbating in front of female officers and speaking to them in sexually derogatory ways. After reviewing these incidents, the experienced probation officer testified CK needs treatment for his sexual aggression.

CK's counsel suggests the court "overemphasized" CK's need for sexual misconduct treatment because his misconduct did not arise from "sexual deviancy" and instead is a result only of "antisocial aggression" and/or an "autistic-like" condition. Regardless of the cause of CK's sexual misconduct, the undisputed fact was that he had repeatedly been sexually inappropriate with female law enforcement officers and staff, and had a history of inappropriate behavior regarding pornography and interactions with young females (including his stepsisters). Several professionals concluded he was

likely to continue these behaviors unless and until they were addressed. The court had a sound basis to conclude CK needed to be evaluated and treated for his sexual acting out, even if he had not received an actual diagnosis of sexual deviancy and had not yet followed through with his inappropriate sexually-aggressive behaviors.

The court did not abuse its discretion by placing CK in DJJ. The decisions relied upon by CK do not support a contrary result. (See *In re Teofilio A.* (1989) 210 Cal.App.3d 571; *In re Carlos J.* (2018) 22 Cal.App.5th 1.) In *Teofilio*, the court did not consider or rule out less restrictive alternatives. The record here makes clear the court gave the matter a lot of thought and carefully considered numerous alternatives, but found DJJ was the only placement that would provide effective programming and the necessary treatment to address CK's numerous issues. In *Carlos*, the prosecutor did not present any information on the specific programs at DJJ or the probable benefit to the minor by the DJJ placement. In this case, the prosecutor presented the testimony of a DJJ agent who detailed the programming that would be available to, and would benefit, CK.

DISPOSITION

The judgment is affirmed.

HALLER, Acting P. J.

WE CONCUR:

AARON, J.

DATO, J.